

Frame analysis of European human rights: the construction of realities surrounding migration, climate change, and authoritarianism by the Council of Europe

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Abstract

Since its establishment in 1949, the Council of Europe (CoE) has not only played a crucial role in the development of ‘European’ human rights law, but also in the construction of an image of Europe associated with human rights. The exact meaning(s) and politics of the notion of ‘Europe’ omnipresent in the works of all organs of the CoE, and how it shapes the imagination and practice of human rights remain understudied. The Symposium introduced by this article attempts to fill this gap by leveraging frame analysis. It asks how Europe is framed in human rights and in turn how human rights are framed in Europe and with what discursive and legal consequences by focusing its attention to three themes: authoritarianism, migration, and climate change. This introduction brings together insights on how these three themes are framed by the CoE, paying particular attention to the shifts therein that seek to reconcile the contradictions between its image of Europe and its member states’ policies and practices. It also includes a general introduction to frame analysis and identifies some common themes on the functioning of frames and framing that lay the groundwork for future use of frame analysis in the context of European human rights law.

1. Introduction

The Council of Europe (CoE) is the inter-state human rights organisation of Europe. Since its establishment in 1949, it has played a crucial role in the development of what today we call European human rights law. By defining the scope and limits of human rights in Europe, the CoE organs have not only created human rights laws, but also influenced our understanding of underlying realities as to what counts as human rights issues and what their possible solutions are. In their role as the human rights standard-setter the CoE organs, therefore, have become a key site for the production and preservation of a certain image of human rights in Europe and Europe in human rights (Demir-Gürsel & Theilen, 2023).

A notion of ‘Europe’ associated with human rights and a concomitant definition of human rights as ‘European values’ have been omnipresent in European human rights discourse and law since the drafting of the European Human Rights Convention (ECHR) in the late 1940s (Duranti, 2021, pp 103-4). The drafters of the ECHR invoked the term ‘conscience of Europe’ to refer to the European Court of Human Rights (ECtHR) (Collected Edition of the “Travaux Préparatoires” of the European Convention on Human Rights vol I, 1975, p 40), which has subsequently become the flagship concept to celebrate the 50th anniversary of the ECtHR in 2010 (Council of Europe, 2010). But the drafters were also criticised for turning human rights into the rights of Europeans. The colonial clause that was included in the former Article 63 (now Article 56) of the ECHR has allowed the European states to choose whether the ECHR applies in their colonies. Léopold Sédar Senghor, who was a delegate for France at the Consultative Assembly at the time of the drafting of the Convention and ten years later became the first president of independent Senegal, famously warned that the colonial clause ‘would transform the European Declaration of Human Rights into the Declaration of European Human Rights’ (Collected Edition of the “Travaux Préparatoires” of the European Convention on Human Rights vol VI, 1985, p 174).

Nonetheless, the exact meaning(s) and politics of the notion of ‘Europe’ omnipresent in the works of all organs of the CoE, and how it shapes the imagination and practice of human rights remain understudied. Even though Europe’s claim to own human rights and the colonial origins of human rights law have been widely studied and criticized (Mutua, 1996; Kapur, 2006), this critical scholarship has rarely addressed the CoE and its role in the

construction of an image of Europe through human rights and an image of human rights through Europe (but see Theilen 2025a). This Symposium attempts to fill this gap by leveraging frame analysis. It asks how Europe is framed in human rights and in turn how human rights are framed in Europe and with what discursive and legal consequences.

Frame analysis is a theory and method employed across the social sciences.¹ There has also been an emerging interest in employing frame analysis in international legal scholarship (Nollkaemper, 2014; Bianchi & Hirsch, 2021a), but its use in the study of human rights law has so far remained rather limited. The Symposium as a whole, therefore, not only contributes to the scholarship on socio-legal study of human rights law, but also to the frame analysis literature in the field of legal studies. It advances a critical research agenda calling for an examination of how certain themes and practices are constructed as falling under the frame of human rights issues (or not), how they are framed within human rights, which scales of justice are invoked, what is ignored, obscured, left aside, or over-emphasized in such constructions and with what consequences.

The Symposium focusses its attention to three inter-linked and overlapping themes of our times and their framing as human rights issues in Europe: authoritarianism, migration, and climate change. These are themes where the CoE struggles the most to sustain its framings of Europe's history and present in human rights law and in turn its framings of human rights as a project in and about Europe. Bringing these three themes into its focus, the Symposium pays attention to how they are framed by the CoE and the shifts therein that seek to reconcile the contradictions between its image of Europe and its member states' policies and practices. This not only helps to flesh out the ways that Europe is framed in European human rights law, but it also shows how framings of Europe in turn impact the understanding of substantive human rights.

The contributors to the Symposium examine a set of questions driven by frame analysis. They ask: What are the frames through which realities of climate change, migration, and authoritarian entrenchment are constructed in European human rights law? What are the

¹ E.g., in social movements scholarship, see Snow & Benford (1988); in media and communication scholarship, see Gitlin (1980), Pan & Kosicki (2010); in gender studies, see Verloo (2007); in environmental studies, see Cooper *et al* (2015); Vanhala & Calliari (2022).

assumptions and terminology underpinning discussions around these topics in the discourses of the CoE? Do the vocabularies of various institutional actors within the CoE and those of civil society and of scholarship overlap or conflict, and with what consequences? What are the repercussions of the specifically European regional framework of the CoE for the protection of human rights in the context of climate change, migration, and authoritarian entrenchment? How does it define the spatial relationships of those affected by authoritarianism, climate change, and migration related human rights violations?

In what follows, we first provide an overview of frame analysis and its theoretical underpinnings. We then turn to the ways Europe is framed in the discourses of the CoE organs and show how employing frame analysis in combination with discourse analysis and ideology critique offers important insights for the analysis of how migration, climate crisis and authoritarianism are made cognizant in Europe (on ideology critique and international law, see Marks, 2000, esp. Chp 1; on the relationship between framing and ideology, see Snow & Benford, 2005). Following this, we outline the cross-cutting themes of Symposium contributions in relation to how frames could be used in (European) human rights research. Throughout, we explore the particular role that the notion of ‘Europe’ plays within the frames deployed by the CoE in general and the ECtHR in particular – while also emphasising the possibilities that lie beyond the frames of European human rights.

2. Frames and their analysis

Frame analysis is a label we employ to encompass ways of studying social constructions of reality (Entman, 1993). Frame analysis is grounded on the premise that reality is discursively constructed (Gorp, 2007, p 73). This premise overlaps with other major theoretical traditions which consider what Michel Foucault calls “discursive formations” and the questions of knowledge and representation that they involve (Foucault, 1969; Hall, 1992, p 201; also see Bianchi, 2021). Frame analysis further builds on the idea that “meaning is created, crystalized, or displaced intersubjectively” (Mendonça & Simões, 2022, p 345). This means that there are at any given time and place multiple ways of interpreting the same phenomenon (Verloo & Emanuela Lombardo, 2007, p 31), each bearing distinct normative and regulative implications. In turn, “how we see, what we make of, and how we act toward the various

objects of orientation that populate our daily lives depend, in no small part, on how they are framed” (Snow, Vliegthart & Ketelaars, 2018, p 393).²

The concept of a *frame* is primarily derived from Erving Goffman’s 1974 study coining frame analysis. According to Goffman (1986 [1974]), pp 10-11), frames are ‘principles of organization which govern events – at least social ones – and our subjective involvement in them’. Frames function as ‘schemata of interpretation’ used ‘to locate, perceive, identify, and label’ events in social world (Goffman, 1986 [1974]), p 21). Frames, however, are not themselves ideas (Engle Merry, 2006, p 41). Nor are they tools to interpret a pre-determined reality. Likewise, they do not provide us with new information (Kinder, 2003, p 359, as cited by Leeper & Slothuus, 2018, p 559). Instead, they help selecting, assembling, interpreting, and giving meaning to what we sense or perceive, which is otherwise complex, scattered, and unoriented. Frames focus attention, tie together, constitute and reconstitute surrounding realities (Snow, Vliegthart & Ketelaars, 2018, p 393).

The need to comprehend, manage, negotiate and build consensuses around complex issues in our surrounding world makes the appeal to frames inevitable (Gitlin, 1980, pp 6-7; Gear, 2012, pp 17-8; Schon & Rein, 1994, p 26). Yet, frames are also necessarily selective. As argued famously by Robert M. Entman, ‘to frame is to *select some aspects of a perceived reality and make them more salient in a communicating text*’ (Entman, 1993, p 52 [emphasis in the original]). When a scene is framed in a certain way, certain other considerations, issues, arguments, and actors are marginalized, left out, or relegated to a less significant status (Ferree, 2003, 306; Verloo & Lombardo, 2007, 38). This feature of framing turns it into ‘an exercise of epistemic closure or limitation’, that ‘mutes’ or ‘invisibilizes’ those that are left out of the frame, while foregrounding others (Gear, 2012, p 17). Framing therefore raises questions of language, power, and knowledge production (Bianchi & Hirsch, 2021b).

Framing then is not oriented towards capturing everything that is seen, sensed, or perceived, but rather those that are selected to be presented through the frame. In other words, framing is not about describing but rather about defining, interpreting, diagnosing, making moral judgments, and suggesting remedies (Entman, 1993, pp 52–3). As such, framing is a normative exercise that puts what is contained in the frame into interaction with the

² For a critique that meaning is created through a more contested process than what frames theory suggests, see Steinberg (1999).

normative. As Judith Butler underlines, frames enable us to see that normativity does not necessarily follow definitions; it is ‘built into’ the definitions themselves, thus conflating the descriptive and the normative, even ‘preempt[ing]’ the descriptive altogether (Butler, 2009, pp 26 and 155).

Against this backdrop, the central purpose of frame analysis is to unpack the frames that are articulated, invoked, and enacted and to study their operations in specific contexts and their normative effects, as well as framing processes, the access to these processes and the actors of framing (see Verloo & Lombardo, 2007; Mendonça & Simões, 2022). These include, on the one hand, the examination of frames, their diversity and competition, the conditions under which one certain frame prevails over others or loses its power (resonance of a frame);³ how and by whom they are produced and circulated; and how they shape and guide perceptions, actions, decisions, policies and regulations.

Frame analysis further generates new insights as to what is contained and what is left out of the frame, or whose views, interests, knowledge and voice are given priority at the expense of others and thus is closely associated with the study of power and exclusion. The question of who has access to the framing processes links frame analysis to debates on democracy and expertise (Verloo & Lombardo, 2007, p 27), and more broadly, to the issue of knowledge production and epistemic governance (Windsor, 2022; Bianchi, 2021). The ability of frame analysis to focus on the politics of knowledge production also allows it to align with feminist and postcolonial theory and analysis, which have long problematized knowledge production with a view to the distribution of who can speak and who is heard (Spivak, 1994; Ahmed, 2000).

The question of who is included and who is left out of the frame, furthermore, adds a critical spatial dimension to insights generated by frame analysis. In *Scales of Justice*, Nancy Fraser advances the notion of ‘spatial frames of relationships,’ understood as ‘scales.’ She asks how the political space, within which those subject to its coercive power should have voice, is framed (Fraser, 2010). Fraser argues that when the political space of justice is framed as a

³ A frame that is mobilized effectively leaving considerable impact in one particular place and time may not have the same impact elsewhere or at another time. The ability of a frame to be successfully mobilized in a particular context is defined as ‘frame resonance.’ See Snow & Benford (1988, p 208); Gamson & Modigliani (1989, p 5). The resonance of a frame is deemed dependent on “mutually affirming interaction of a frame with a discursive opportunity structure supportive of the terms of its argument.” See Ferree (2003, pp 309-10).

national one, ‘spatial relationships’ of those ‘subject to the coercive power of non-state and trans-state forms of governmentality’ are ‘misframed’ (Fraser, 2010, pp 64-5). Accordingly, for Fraser, the problem of ‘misframing’ occurs when political space is falsely – or selectively – divided to exclude some individuals from considerations of justice (Fraser, 2010, pp 62-3). Yet, rather than being wrong, how the scales of an issue of justice is determined depends on the viewer’s (or framer’s) perspective – and hence ideology. As Annelise Riles reminds us, spatial frames represent not only ‘a *space* or place’ but also ‘a *way of looking*’ (Riles, 1995, 48-9). In other words, the definitions of the scales of an issue as local, national, regional or global tell us less about the actual scales of a problem than its framer’s perspective and ideology.

3. Frames of European human rights

In European human rights law, every attempt to define human rights and their limits has implications for how Europe is seen by those possessing the authority and capacity to frame Europe’s engagements with human rights. Drawing on frame analysis in conversation with discourse analysis and ideology critique, the Symposium contributors explore how the notion of Europe frames human rights in matters related to migration, climate change, and authoritarianism. The contributions attend to how the CoE’s framings delimit how it sees and defines human rights issues and their solutions, how it allocates the authority to deal with these issues across national and regional jurisdictions, and to what and who is excluded from the CoE’s definitions. In so doing, they also show how the CoE organs, in particular the ECtHR, constitute Europe as a legal and political space. In this section, we draw together some of their insights with regard to each of the three main topics covered: migration, climate change, and authoritarianism.

3.1. Migration

Migration constitutes perhaps the most contested field in contemporary European human rights law. The framing of migrants as human beings with human rights first and foremost has never carried much weight in the ECHR, which from its inception was geared primarily at protecting Europeans (Dembour, 2015). The ECtHR, too, has taken up anti-migration arguments based on sovereignty and democracy (Dembour, 2015; Costello 2016; de Vries & Spijkerboer, 2021; Theilen, 2025b). Sovereignty and democracy are two key concepts that

invite competing framings portraying migrants as a threat to the security, stability, and prosperity of European states (Hocquet, 2024, p 197). Even so, many governments believe that the ECtHR should take a more restrictive stance still, as exemplified in the recent ‘letter of nine’ initiated by Denmark and Italy which takes up the racist dichotomy of ‘good’ and ‘bad’ migrants and frames the latter as ‘undermining the very foundation of our societies’.⁴

Even when the human rights implications of migration policies and practices are acknowledged, European human rights institutions tend to attribute responsibility to other actors, such as smugglers, rather than thoroughly scrutinizing the responsibility of European states.⁵ They do so through specific framings that exceptionalize and individualize suffering, while structural issues related to border regimes (as well as citizenship regimes) are shifted outside the frame of European human rights (Theilen, 2025b).

One such framing of migration related to human rights issues is ‘humanitarian’ framing, which dominates the medical non-refoulement cases in the case law of the ECtHR. In her contribution to this symposium, Vandita Khanna concentrates on underlying global inequalities in seriously ill migrants’ claims that appropriate medical treatment is unavailable in their countries of origins. Khanna shows how the humanitarian frame is used by the ECtHR to ‘select’ and ‘exclude’, to ‘arrange’ and ‘assemble’, and to ‘emphasize’ and ‘de-emphasize’ relevant facts in ways that render global inequalities ‘invisible’ or ‘insignificant’ to seriously ill migrants’ claims. Khanna argues that the humanitarianisation of human rights thus leads to the ‘individualization’ and ‘exceptionalisation’ of non-removal of seriously ill migrants, while underlying global inequalities are moved outside of the frame of European human rights as ‘natural’ and ‘ahistorical’ and thus as no one’s responsibility.

As such, medical non-refoulement cases remind us that when we talk about European human rights, we are primarily talking about the rights of Europeans. The exclusion of colonies from the protection of the Convention was the first indication of the broader exclusion of non-Europeans and non-nationals outside the territory from the scope of European human rights (Theilen, 2025a). The Court’s handling of human rights jurisdiction in migration-related

⁴ The letter of nine states, including Denmark, Italy, Austria, Belgium, Czech Republic, Estonia, Latvia, Lithuania, Poland, can be found here: https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf; see critically Buyse (2025).

⁵ For the ECtHR, see *Rantsev v Cyprus and Russia*, App no 25965/04 (ECtHR, 7 January 2010). For a statement by the former Secretary General of the CoE, Marija Pejčinović Burić, see Council of Europe (2024); for the Parliamentary Assembly, see PACE (2024).

matters provides yet another example, as demonstrated by a recent decision. In *S.S. and Others v. Italy*, the Court denied jurisdiction under the ECHR in a case concerning the violent pull-back operation of a group of migrants in the Mediterranean by the Libyan Coast Guard, acting at the request of the Italian authorities.⁶ Indeed, the decision in *S.S. and Others* is particularly telling since the Court, even as it refuses to apply European human rights to the applicants, seems at pains to nonetheless present Europe as a space of human rights and the rule of law – paradoxical in a sense but entirely in line with the Court’s understanding of who European human rights are for in prior cases.⁷

Nurbanu Hayır’s contribution examines the spatial limitations of European human rights law and shows the importance of space and membership in the determination of human rights jurisdiction – issues that go to the heart of the question of specifically ‘European’ human rights. To do this, Hayır focuses on the case of *M.N. and Others v Belgium* involving a Syrian family that had applied for visas at the Belgian Embassy in Beirut in order to submit an asylum claim upon their arrival in Belgium.⁸ In this case, the Court held that Belgium was not responsible under the ECHR for rejecting the family’s visa application. According to the ECtHR, ‘the mere fact that decisions taken at national level had an impact on the situation of persons resident abroad is not sufficient to establish the jurisdiction of the State concerned over those persons outside its territory.’⁹

Juxtaposing the exclusion of non-nationals from jurisdiction in this case with the case law establishing jurisdiction in relation to the consulate and embassies’ operations regarding the nationals (as in the case of issuing passports), Hayır demonstrates that territoriality becomes the key criterion for the exclusion of non-members from European human rights protection, whereas the membership aspect perseveres when extending jurisdiction for nationals. Hayır concludes that the exclusion of asylum seekers from the jurisdiction in *M.N. and Others* squares onto the framing of rights as ‘rights of nationals (members) residing within a territory (space),’ indicating the Court’s selection of a ‘spatial membership frame’ over a ‘relational frame’ in the determination of jurisdiction.

3.2. Climate change

⁶ *SS and Others v. Italy* [dec]. App no 21660/18 (ECtHR, 20 May 2025). Also see Moreno-Lax (2025).

⁷ See the analysis as a simulacrum by Spijkerboer (2025).

⁸ *M.N. v Belgium* [dec], App no 3599/18 (ECtHR, 5 May 2020).

⁹ *M.N. v Belgium*, para. 112.

In its widely discussed rulings delivered in 2024, the ECtHR framed climate change as a human rights issue.¹⁰ Yet, it has simultaneously introduced significant limitations both to its own powers and to those who can pursue a legal struggle before the Court against the failures of European states to take effective mitigation and adaptation measures. The normative power of membership and territory in the determination of jurisdiction under the ECHR as a ‘European’ treaty has been omnipresent in the Court’s rulings on climate change. In *Duarte Agostinho and Others v Portugal and 32 Member States*, which concerned the application by six children from Portugal against thirty-two member states alongside Portugal for their failure to take effective measures against climate change, for example, the Court repeatedly referred to *M.N. and Others* to justify its denial of jurisdiction under the ECHR.¹¹ It reiterated that a decision made at the national level that affects the situation of a non-citizen abroad does not, by itself, establish that the state has jurisdiction over that person. According to the Court, to argue otherwise, as the applicants in *Duarte Agostinho* did, would mean to expand the responsibilities of European states ‘towards people practically *anywhere* in the world.’¹²

In examining frames of climate change within European human rights law, Corina Heri in her contribution identifies what she calls the ‘domesticating frame.’ According to Heri, the domesticating frame operates in two ways: first, by excluding anyone located outside the state from the protection of the Convention, and second, by flattening the diverse experiences of individuals within that state and treating them as belonging to a ‘homogenized domestic whole.’ Heri concludes that framing an issue as either domestic or universal is a deliberate act that reflects underlying ideas about ‘who matters’ and ‘who does not matter’ to European human rights law: ‘domestic climate victims, who have actionable rights, and their others, whose experiences are irrelevant to the ECHR framework. This outcome reinforces the inherent – spatial, temporal, racialized, colonial, extractive – inequities of climate change.’

The ECtHR’s climate rulings not only domesticate the effects of climate change but also the possible solutions to address climate change. In her contribution, Başak Çalı examines the solutions proposed by the Court to address climate-related harms, arguing that in all three

¹⁰ *Duarte Agostinho and Others v Portugal and 32 Member States* [GC] 39371/20 (ECtHR, dec, 9 April 2024); *Carême v France* [GC] 7189/21 (ECtHR, dec, 9 April 2024); *Verein KlimaSeniorinnen Switzerland and Others v. Switzerland* [GC] 53600/20 (ECtHR, 9 April 2024).

¹¹ *Duarte Agostinho and Others v Portugal and 32 Member States*, para. 184; on the connection between the two cases and the racialized element in both, see Theilen (2024b).

¹² *Duarte Agostinho and Others v Portugal and 32 Member States*, 208 [emphasis added].

rulings, the remedies were shaped by the *trust* the Court placed in the judgment of the democratic governments, parliaments, and courts of European states. In this context, trust functions as a frame through which the Court focuses narrowly on the formal presence of democratic institutions and judiciaries without addressing whether these bodies can actually be relied upon to deliver effective climate remedies. Moreover, as Çalı emphasizes, the Court extends this trust collectively to all forty-six states party to the ECHR, based on a presumption of democratic trustworthiness. Thus, in addressing climate harms, the Court presupposes a unified domestic population as a homogeneous victim through its domesticating frame, while when proposing remedies, it assumes a homogeneous democratic European political and legal space through its trust frame.

As Çalı suggests, this flattening of the European political and legal space allows the Court, first, to maintain the view that domestic institutions are ‘better placed’ to address the harms of climate change, despite the complexity and scale of the problem – one that clearly cannot be contained within national boundaries. Second, it enables the Court to confine struggles for climate remedies to the national level, effectively foreclosing the possibility of claiming transnational harms or seeking remedies against European states other than one’s own.

3.3. Authoritarianism

We come across a similar flattening of the European political and legal space as a whole in terms of its self-image as democratic, and this has significant implications for how the CoE organs – including, but not limited to, the ECtHR – manage the growing trends against the rule of law, human rights, and liberal democracy across Europe. Over the past decade, much has been written about these trends against liberal democracy (e.g. Mudde & Kaltwasser, 2012; Galston, Hunter & Oven, 2018; Ginsburg, 2021). Despite the continuing emphasis on human rights, rule of law and democracy as the *raison d’être* of the CoE, organs of the CoE have not only failed to prevent these developments but have also remained notably cautious in using or creating tools to address practices and policies of European states running against liberal democracy (e.g., Muižnieks, 2019; Benedek, 2020; Çalı & Demir-Gürsel, 2021).

One striking example of this – and of the way that the notion of ‘Europe’ plays a role – is the case of Russia. Despite having ample grounds to act during the membership of Russia in the CoE, no sanctions were in place, nor were any procedures underway against Russia, until it

invaded Ukraine and was consequently expelled from the CoE (on the appeasement of Russia by the CoE members, see Glas, 2018 and 2019; Demir-Gürsel, 2021b and 2022). After its expulsion, the CoE and its member states became much more willing to condemn Russia while simultaneously emphasizing their own unity around European values: They stated their ‘resolve to unite around our values and against Russia’s war of aggression against Ukraine, a flagrant violation of international law and everything we stand for’ (Reykjavík Declaration, 2023; see also Demir-Gürsel & Theilen, 2023). Similarly, in its recent judgment *Ukraine and the Netherlands v. Russia*, the ECtHR put an unusually strong emphasis on European values while applying an approach to jurisdiction that is notably broader than what it was willing to assert in other contexts.¹³ Comparisons with the ICJ’s *Nicaragua* judgment (Khachatryan, 2025) fail to capture this dynamic, where the framing of Russia as already-outside of Europe (which finds no parallel in the ICJ proceedings) is a crucial part of enabling the CoE and the ECtHR to make comparatively bold statements.

In her contribution, Esra Demir-Gürsel examines the gap between what is expected from the CoE (or what it claims to represent) and the actual practice of its organs by analyzing the discursive functions of the terms they use to define the trends against liberal democracy, including totalitarianism, authoritarianism, populism, and democratic backsliding. Demir-Gürsel proposes viewing the use of these terms within the CoE context as framing acts, through which specific aspects of the state of democracy and human rights in Europe are selected and emphasized, while others are omitted or sidelined.

Demir-Gürsel finds that within the CoE, the terms *populism* and *democratic backsliding* are predominantly used to frame internal challenges to liberal democracy, while *totalitarianism* and *authoritarianism* are used as ‘oppositional frames’ that define the past or present external Others of European states. Specifically, totalitarianism is invoked in reference to Europe’s past Others, which is the countries of the former communist bloc, while authoritarianism is used to characterize present Other, which is Russia since its invasion of Ukraine. This framing constructs an opposition between the external Others and the democratic identity of CoE member states. At the same time, internal trends against liberal democracy among CoE members are described using terms like ‘populism’ and ‘democratic backsliding,’ which, despite their critical tone, still presuppose the continued existence, albeit weakened, of democratic governance.

¹³ *Ukraine and the Netherlands v Russia* [GC], App nos 43800/14 (ECtHR, 9 July 2025), paras 348 et seqq.

Accordingly, this opposition helps the CoE to flatten Europe's politico-legal space and to associate it with human rights and democracy. Relatedly, this explains why the CoE organs remain cautious and weak in their responses to trends against liberal democracy among the member states.

As such, the CoE and its organs act as framers, selecting, assembling, and organizing certain facts while excluding others to define Europe and European states in particular ways. In his contribution, Daniel R. Quiroga-Villamarín focuses on how human rights courts use historiographical arguments in their legal interpretations, acting as 'curators' or as 'framers'. Addressing the jurisprudence of both the ECtHR and the Inter-American Court of Human Rights (IACtHR) on vertical violence, understood as violence against communities by their own states, and authoritarian repression, Quiroga-Villamarín identifies three 'historiographical framings': 'arguments surrounding (factual) context; (legal) change; and (dis)continuity between past, present, and future.'

By examining case law on violence and authoritarian repression from the ECtHR and IACtHR, Quiroga-Villamarín explores the historiographical choices made by both courts when determining, for example, whether a situation constitutes a 'war' or mere 'peacetime' violations, 'domestic unrest' and 'terrorism' or an 'international conflict as part of the Cold War,' or 'dictatorial violence' or a 'civil war.' Each of these framings is rooted in specific historiographical approaches and, as Quiroga-Villamarín argues, they can have significant implications for judicial reasoning and legal interpretation.

4. Common themes and potential of frame analysis in the study of European human rights

The analysis of frames of, within, and through human rights in this Symposium has implications beyond the three thematic foci examined: migration, climate change, and authoritarianism. In this section, we draw out some common themes emerging from the Symposium's contributions. These are the themes which are geared more at the way in which frames function within the CoE and international human rights law more generally. They also show how the notion of 'Europe' plays a central role not only in the selection of frames but also in their operations in the context of European human rights law. Our categorization below is heuristic. It neither aims to be exhaustive nor are the aspects listed entirely distinct

from one another. We consider the aspects sketched below important to understand how frames work – and what work frames do – that can lay the groundwork for future use of frame analysis in the context of (European) human rights law.

4.1. Flattening complexities

As noted at the outset, the basic premise of frame analysis is that reality is constructed. Accordingly, the selection and pervasiveness of certain frames lead to particular constructions of realities surrounding migration, climate change, and authoritarian repression, as it does in relation to other topics. The contributors to the Symposium show that such reality constructions are made possible by flattening complexities, moving some relevant considerations out of the frame – considerations that could otherwise offer alternative narratives.

In the ECtHR's climate jurisprudence, for instance, the 'trust' and 'domestication' frames analysed by Çalı and Heri, as described above, lead to the flattening out of differences both between and within states. Likewise, in the field of authoritarianism, established opposition between Russia and the remaining CoE member states, help the CoE organs flatten the latter as 'democracies' and 'defenders' of European values, as suggested by Demir-Gürsel.

Leaving otherwise relevant considerations out of the frame is in a sense a necessary corollary of such flattening since the aspects sidelined would otherwise complicate the picture. For instance, Khanna shows how the ECtHR reasoning render global inequalities irrelevant to the realities of the seriously ill migrants' expulsion cases or, as we see in Quiroga-Villamarín's contribution, historiographical frames obscure the connections between violent suppression of counterinsurgency activities and Cold War politics. Likewise, Demir-Gürsel suggests that the totalitarianism frame pushes the racism of Nazi Germany to the margins at best, while Hayır demonstrates how the Court reduces the role of consulates and embassies to purely national affairs, leaving out their central function in external migration control, despite its crucial implications for safe access to asylum procedures in Europe.

In the context of European human rights law, such flattening of complexities almost always relates to the construction of Europe as a politico-legal space: States within the CoE are homogenised as European and hence democratic and trustworthy in matters of human rights (as analysed by Çalı), while its outside is viewed through oppositional frames (as analysed by

Demir-Gürsel) or humanitarian frames (as analysed by Khanna). In analysing this dynamic, frame analysis of European human rights speaks to Stuart Hall's work on the discourse of 'the West' and 'the Rest'. He describes this discourse as representing different European cultures as homogeneous, united by difference from 'the Rest'. This is precisely the point: 'For simplification' – what we have been calling flattening – 'is precisely what this discourse itself *does*' (Hall, 1992, p 189; see also Theilen, 2025a, p 119).

4.2. Dominant frames and underlying normative choices

Even though there are multiple ways to interpret an event and to construct its surrounding reality through different frames, certain frames are more dominant and are oft shared across CoE institutions: For example, framing smugglers rather than states as the problem in the context of migration is a move that appears not only in the Reykjavík Declaration by European Heads of State (2023, p 7), but also in the documents of several CoE organs, including the ECtHR.¹⁴ Yet even when consensual across CoE organs in this sense, frames will never be uncontested. A key question, then, is: what are the competing frames, and whose frames are adopted by the ECtHR and other CoE organs when constructing the realities surrounding migration, climate change, authoritarianism?

Contributions to this Symposium demonstrate that the frames adopted by the CoE, including the ECtHR, often align with those of European governments. In climate change rulings, for example, Çalı and Heri show that the Court's framings mirror governmental arguments, while alternative framings proposed by applicants or intervening human rights organizations, such as climate justice or climate urgency, remain inconsequential to the Court's legal interpretation. Likewise, in *M.N. and Others v Belgium*, both the applicants and the intervening organizations argued for the adoption of the competing frame, which is defined by Hayır as the 'relational frame that acknowledges the rights of all those subject to state power'. Unlike the 'spatial membership frame that proceeds on certain premises about who should be the right holders and where', if adopted, the 'relational frame' would require recognizing the refusal of applicants' visa applications as an exercise of jurisdiction, regardless of their nationality.

¹⁴ See the footnote 15 above.

These findings speak to critical perspectives on human rights, which see human rights, at least in their institutionalized form, as primarily lending legitimation to the *status quo* rather than providing a true counterpoint to state interests (e.g. Marks, 2011; Kapur, 2020; Middeler, *forthcoming*; Ananthavinayagan & Theilen, 2024, pp 610-2). Contributions to this Symposium show under which conditions and with what limitations rights are granted and where they are withheld for the sake of the interests of European states, revealing the choices made by the CoE organs and their effects.

If we think of frames as ‘a way of looking’ (Riles, 1995, 48-9), then studying a frame tells us less about the issue being framed and more about the actor or institution who is putting forward the frame. In this sense, frame analysis can be thought of as a mirroring technique, reflecting the implications of frames back at the framers. In other words, studying frames of the CoE then is also a way of researching its perspectives, ideology, and normative choices. Demir-Gürsel’s discussion of totalitarianism and authoritarianism as oppositional frames, for instance, shows the crucial role these frames play in the efforts of the CoE organs to construct an identity for Europe as a space of democracy and human rights rather than what or who is framed as totalitarian or authoritarian. This space of democracy and human rights is also framed as ‘benevolent,’ as suggested by Khanna’s discussion of the exceptional human rights protection provided for ill migrants based on humanitarian grounds.

4.3. Frames in judicial reasoning: the ECtHR as a framer

Within the CoE, the ECtHR plays a central role as a framer, not only because its judgments are legally binding on the parties to the case but also because the Court is the ultimate interpreter of human rights in Europe. In light of this, it is surprising that courts in general and the ECtHR in particular have so far been rarely analysed as framers. As Başak Çalı argues, applying frame analysis to courts provides for a different perspective on legal reasoning than doctrinal canons of analysis: it produces knowledge about the choices made and those not made through legal doctrine. Here, again, there is overlap with critical traditions that emphasise the politics of legal decision-making (Erakat, 2019, p 4), including in the decisions by the ECtHR (Theilen, 2021, pp 32 et seqq).

Frame analysis can be used to analyse judicial reasoning and doctrine in at least two ways. One of these examines, as Başak Çalı does in this Symposium, the link between diagnostic and prognostic frames (Benford & Snow, 2000) within a certain judgment or line of case-law.

One of the dynamics that frame analysis is particularly apt at capturing is precisely this link: how the framing of a problem in a certain way (whether something is framed as a problem at all, what or who is identified as the problem, and how the specifics of that problem are framed) already points towards certain solutions while rendering others unthinkable. Within a certain judgment, this means that the frames used in the ECtHR's reasoning can help to explain its finding of a violation or non-violation as well as the choice of remedies that it offers.

Similarly, as Quiroga-Villamarín ponders, using historiographical frames to judicially analyze a war or acts of terrorism, for instance, not only reflects the particular choices made in the construction of history but also leads to the construction of legality. In this vein, Quiroga-Villamarín discusses the famous case of *Ireland v the United Kingdom*¹⁵ and the ECtHR's choice to frame it domestically, 'as if the violations did not have any roots that went beyond the frontiers of the polity under judicial scrutiny'. Its finding that the UK practices did not amount to torture relates to its historiography, its use of the terrorism frame – and its understanding of European states as civilised (Farrell, 2022). European identity or the 'sense of self' (Farrell, 2022, p 3) discussed above can thus directly impact the results of proceedings before the ECtHR.

On the other hand, frames within the ECtHR's judgments can also be analysed without relating them to the judgments' outcomes, by focusing attention on the broader discursive effects of legal reasoning (Theilen, 2025b, p 69). Not only can ECtHR judgments have an effect on states parties other than the parties to the case; so can the frames which the Court deploys in its reasoning. This approach can be helpful to identify themes within the ECtHR's case-law that remain hidden when too much analytical weight is given to the whether certain judgments involved a 'progressive' outcome or constituted a 'success' on the merits. For example, the attribution of responsibility to smugglers rather than states in the context of migration case law, and the 'penal frame' adopting a carceral solution that often accompanies such attribution (Mavronicola 2024, p 553), both appear in cases in which the Court is highly deferential to states but also in leading cases commonly considered to be progressive (Theilen, 2025b, pp 90-1).

4.4. Scales of justice of European human rights

¹⁵ *Ireland v The United Kingdom*, 5310/71 (ECtHR, 18 January 1978).

European human rights law, a body of law that is made through a constant navigation between the national, regional, and global dynamics, requires paying particular attention to spatial framings. By investigating how spatial frames inform the decisions and policies of the CoE organs, we can further analyze which scales (domestic, regional, or global) are deemed relevant to human rights issues at stake, when and why this is the case, what reality is performed through the selected scales, with what consequences for the policies and decisions of the CoE and for those affected by them. As noted above, at which scale we approach an issue is itself a question of perspective – a frame rather than an a prior reality. As Annelise Riles puts it, ‘(t)he global is both a way of looking that eclipses all others, and a space or place. The nation is a way of imagining identity that grafts itself onto a notion of territory. The local, as “location”, is also an ideology’ (Riles, 1995, 48-9 [emphasis omitted]).

The contributions to this special issue raise questions that expose the choices involved in determining the scale of a given issue. Heri and Çalı, for instance, ask how a challenge like climate change – often understood as ‘planetary’¹⁶ – can be framed as merely a domestic matter. Quiroga-Villamarín examines the consequences of overlooking the international patterns of violent insurgency suppression during the Cold War. Hayır reflects on why territorial jurisdiction extends to overseas missions when nationals are involved, yet retracts to national borders when it concerns the public acts of foreign missions involving non-nationals. These contributions suggest that when a CoE organ defines the scale of an issue – whether domestic, regional, or international – it does so to construct a particular version of reality.

The way the scales are conceptualized therefore has certain normative consequences. For example, understanding climate change as a ‘planetary’ crisis can distract from the distinct responsibilities of states of the Global North in causing it (Demir-Gürsel & Theilen, 2023, p 8; Boysen, 2021, pp 101-2). The scale at which an issue is approached can also determine whether individuals fall under the jurisdiction of domestic or international institutions, or whether they are abandoned altogether. In the contexts of both migration and climate change, for example, non-resident and non-Europeans are simply abandoned, left outside of the European human rights frame, through a narrow interpretation of jurisdiction.

¹⁶ For instance, see the Reykjavík Declaration – United Around Our Values (2023, p 6); see also the rhetoric of ‘humankind’ and a ‘global challenge’ in *Duarte Agostinho and Others v Portugal and 32 Member States*, paras. 193-194.

Reading the ECtHR's case-law across these different subject-matters through spatial framings leads to the conclusion that the notion of 'Europe' moves in and out of the ECtHR's reasoning in ways that benefit the states parties to the ECHR:¹⁷ regional spatial framings limit jurisdiction with regard to non-Europeans, for example, and global spatial framings such as 'planetary' crises may serve to obscure European states' responsibility for climate change.

4.5. Allocation of authority, responsibility, and jurisdiction

As the above discussion shows, in law in general and in international human rights law in particular, the selection of frames plays a crucial role in the decisions on 'who is to be protected' by law and 'what is to be regulated and what not' (Nollkaemper, 2014, p 4). Yet, this is not only limited to spatial framings. All framing choices may serve to allocate authority, responsibility, and jurisdiction (Koskenniemi, 2011, pp 336-8; Eslava, 2014; Dehm, 2015, p 137),¹⁸ which at times results in the abandonment of individuals, as discussed in the preceding section. Drawing from Butler, Sara Dehm argues that 'frames as legal devices [reveal] how frames also intimately mould forms of life, *attaching individuals to institutions* and scripting how their conduct is juridically apprehended' (Dehm, 2015, p 166 [emphasis in the original]).

Frames adopted by the CoE organs help to negate states' responsibilities, for instance, for their extraterritorial green gas emissions (Çalı and Heri), for their historical wrongdoings (Quiroga-Villamarín), or for their migration policies leaving people with no option but to follow dangerous routes for asylum (Hayır). Unless there are exceptional reasons, they do not bear responsibility towards seriously ill-migrants. Neither their role in the production and reproduction of global inequalities is considered the business of the CoE organs (Khanna). Likewise, frames chosen to refer to trends against democracy and human rights might explain the failures of the CoE organs to properly address the current state of democracy and human rights in Europe, allowing member states to go unchecked in their assaults on the so-called 'European values' (Demir-Gürsel).

¹⁷ For a similar argument on how the state 'moves in and out' of the ECtHR's frames, see Vandita Khanna, 'Roma Vulnerability before the European Court of Human Rights: Towards a Structural Account' (2024) 42 *Netherlands Quarterly of Human Rights*, 340, 351.

¹⁸ For an empirical study on the authority-allocating and constraining functions of framing in the context of climate induced mobility, see Lisa Vanhala & Elisa Calliari, 'Governing People on the Move in a Warming World: Framing Climate Change Migration and the UNFCCC Task Force on Displacement' (2022) 76 *Global Environmental Change* 1.

In particular, in the case of the Court, its responsibility-limiting framings simultaneously reinforce the authority of state parties. The ‘domesticating framing’ of climate change (Heri) along with the ‘trust frame’ (Çalı) allows the Court to reendorse that its role is subsidiary and national authorities are ‘better placed’ to assess the surrounding conditions of human rights violations stemming from their green gas emissions.¹⁹ In this vein, the Court’s ‘trust frame’ and ‘domestication framing’ find application beyond its climate jurisprudence. In the area of migration, this is reflected in the Court’s belief that the norms it previously established can be reliably applied by domestic courts—what is commonly known as procedural review.²⁰ In the context of authoritarianism, similarly, the Court appears to consider its role as largely fulfilled by its earlier, extensive case law on a range of authoritarianism-related issues, now deferring to domestic courts as trustworthy agents to apply those standards and address such problems domestically before a case could reach to it (Demir-Gürsel, Theilen & Rau, 2025).²¹ In turn, those seeking remedies against authoritarian laws, policies, and practices find themselves referred back to the very domestic institutions that are the source of their predicament.²²

4.6. Possibilities beyond current frames

Finally, a common theme of the contributions to the Symposium is that they gesture towards what and who is left outside of the CoE’s frames. To analyse the dominant frames within European human rights is therefore to show that they can be challenged. This overlaps with critical international legal theory, which often comes with an emphasis, sometimes an over-emphasis (Marks, 2009), on indeterminacy and contingency, aiming to show that law is not as it is out of necessity, that it could be different.

Indeed, even a brief look at human rights institutions beyond the CoE shows that alternative frames are possible. The IACtHR’s recent Advisory Opinion on the climate emergency includes ‘post-anthropocentric’ elements, mandates ‘differentiated responsibilities,’ and

¹⁹ *Verein KlimaSeniorinnen and others v Switzerland*, para. 449.

²⁰ For one of the most known advocates of this proceduralisation in the Court’s case law, see Spano (2014). For its critique, see Çalı (2021, 913–5); Demir-Gürsel (2021a, pp 248–51); Madsen (2021, 195–200).

²¹ On how and with what consequences, the ECtHR’s practice on the requirement to exhaust domestic remedies assigns a high level of trust to domestic judicial bodies, despite their apparent failure to fulfill their functions, see Demir-Gürsel, ‘A Legal Trap for Freedom of Expression’ (*Verfassungsblog*, 5 July 2024), available at: <https://verfassungsblog.de/a-legal-trap-for-freedom-of-expression/>.

²² The Court has demonstrated a rigid commitment to the exhaustion of domestic remedies rule in the name of subsidiarity, even in cases where there was no domestic legal remedy available to the applicants at the time of their applications. See, especially, *Köksal v Turkey* [dec] App no 70478/16 (ECtHR, 6 June 2017). For a discussion on this, see Zysset & Çalı (2023).

frames climate change as an ‘emergency’, for example (see Auz, 2025).²³ Comparison comes with its own politics, as Quiroga-Villamarín’s contribution shows. While itself limited, drawing inspiration from other regional and global human rights institutions can provide one way to destabilise the frames of European human rights. Crucially, this too relates to the notion of ‘Europe’: taking non-European human rights institutions seriously as ‘contexts of production’(Gathii, 2018) means moving beyond the colonially infused idea of Europe as inherently progressive and the ECHR as the ‘most advanced’ system of human rights protection (see critically Theilen 2025a, 139).

Even without foregrounding other institutions, alternative possibilities inevitably haunt whichever frames are dominant in any given context – including in European human rights law. We opened this article by reference to early debates on the notion of ‘Europe’ in relation to the ECHR. Even during the drafting process of the ECHR against the backdrop of widespread formal colonialism, Senghor provided a counter-framing of the ECHR as a treaty protecting the human rights of Europeans. Even then, there was contestation as to the subject of human rights – differently put, the framing of who counts as human (Gear, 2012, 32-3).

Regardless of which frames dominate human rights law in Europe, therefore, alternative constructions of realities are always present. Because framing involves flattening and delimitation, every frame implicitly relies on what it does not contain as its constitutive outside (Butler, 2009, pp 4 and 9; Hall, 2002, p 60). Contestation of dominant frames can make these alternatives explicit. By analysing frames, then, ‘you may begin to see not only the boundaries they create but also the possibilities that exist beyond them’ (The Editorial Team of *On Culture*, 2025, p 7). These possibilities, in turn, can be taken as the starting point for working towards (the construction of) new realities. As Judith Butler puts it, when ‘the frame is always throwing something away, always keeping something out, always de-realizing and de-legitimizing alternative versions of reality’, it is ‘busily making a rubbish heap whose animated debris provides the potential resources for resistance’ (Butler, 2009, p xiii). Making use of such resources could not be more urgent.

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²³ Inter-American Court of Human Rights (2025), Advisory Opinion AO-32/25 of May 29, 2025, available at: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf.

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